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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1964.

No. 1031.

CAPITOL AIRWAYS, INC.,
Petitioners,

v.

THE AIRLINE PILOTS ASSOCIATION, INTERNATIONAL,
Respondent.

BRIEF

Of the Airline Pilots Association, International, in Opposition to Petition for Writ of Certiorari.

CECIL D. BRANSTETTER,
216 Third Avenue North,
Nashville, Tennessee,
HARRY NOE,
55th Street and Cicero Avenue,
Chicago 38, Illinois,
Attorneys for Air Line Pilots Association, International.

CROWNOVER & BRANSTETTER,
216 Third Avenue North,
Nashville, Tennessee,
Of Counsel.

St. Louis Law Printing Co., Inc., 415 N. Eighth Street. CEntral 1-4477.

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Case Cited.

International Association of Machinists, AFL-CIO. et al. v. Central Airlines, Inc., 372 U. S. 682, 10 L. ed. 2d 67 (Apr. 15, 1963) 6

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MAY IT PLEASE THE COURT:

Comes now the Respondent in comformity with Rule 40 (3) of this Court and in reference to the Petition for a Writ of Certiorari, states and recites as follows:

OPINION BELOW.

The opinion of the United States Court of Appeals for the Sixth Circuit is reported unofficially in 58 LRRM 2404.

STATEMENT OF THE CASE.

Petitioner (hereinafter referred to as "Capitol") is an air carrier operating pursuant to authority conferred by the Civil Aeronautics Board; and is a Tennessee corporation with principal offices in Nashville, Davidson County, Tennessee.

Respondent, Air Line Pilots Association, International (hereinafter referred to as "ALPA") is an unincorporated association organized for the purposes and objects of a labor union, with offices in Chicago, Illinois.

Capitol employs a substantial number of Air Line Pilots and the terms and conditions of employment are set forth in a collective bargaining agreement (R. 3a, 4a).

The collective bargaining agreement provides for the submission of disputes, grievances and other matters for adjudication and final settlement to an arbitration panel. This arbitration panel is known as the System Board of Adjustment (hereinafter referred to as "Board") and was established by agreement between Capitol and ALPA pursuant to a mandate in the Railway Labor Act (R. 4a).

Certain grievances arose and were submitted in accordance with procedures contained in the collective bargaining agreement, resulting in awards by the Board in favor of grievants R. N. Hull, J. L. Carlin, Robert M. Gerhard, and John K. Riley. Capitol refused to comply with the awards of the Board (R. 5a, 6a).

District Court action was initiated by Capitol and a counter-claim filed by ALPA requesting enforcement of the awards (R. 85a-87a). Motions for summary judgment were made and rulings had thereon by the District Court, resulting in an appeal and cross-appeal to the Sixth Circuit (R. 151a-163a).

The Board awards are briefly summarized below:

Riley Award.

The Award shows that Captain Riley was put on the Capitol roster and seniority list of September 7, 1961, as number 110. The Board found that Riley was a furloughed employee; that a letter of recall was sent him on October 13, 1961; and that he accepted said recall. In reporting for work with Capitol, Riley was forced to quit a job with Riddle Airlines in Oklahoma City (R. 80a, 81a). The Board Award stated in part:

> "However, since the records show that Captain Riley is still carried on the Capitol Airways list as a furloughed employee, it must be admitted that Capitol Airways, Inc., must at least in a measure recognize him as an employee since he has not been dropped from the records" (R. 84a).

The Board awarded Captain Riley $4,800.00 to compensate him, in part, for Capitol's refusal to pay his salary after he accepted the recall and reported for duty (R. 84a).

Hull Award.

In the Hull Award, the discharge by Capitol was based on the Operations Manual, which allegedly provides that a crew member can be discharged for smuggling. The Board Award shows that while Captain Hull was in Frankfort, he purchased two musical instruments. On arrival in this country, Hull asked a Stewardess to list these instruments on her declaration and she agreed to do so. Subsequently, the customs officials cleared the instruments and the Stewardess paid the duty on them (R. 59a, 63a-65a).

The Board noted that Hull was Chairman of the Grievance Committee; that he was not guilty of smuggling

since the customs duty had been paid; that the sort of activity complained of was done openly and often (R. 68a, 75a); and as to Capitol's allegations of misconduct, the arbitrator stated:

> "Now I hope these gentlemen don't believe that I can accept such unadulterated claptrap" (R. 74a).

The Board found that Capitol had not attempted to discipline the Stewardess for her part in the episode (R. 75a); and decreed that Hull was to be returned to work. In finding that Hull was not guilty of smuggling, the Board stated:

> "In fact, so much of this is done, and done openly, that the Customs Bureau even has a place on its form to instruct crew members about listing items carried by 'you as an accommodation for others'" (R. 72a).

Gerhard Award.

Gerhard was discharged by Capitol for allegedly refusing to fly a ferry flight. The award of the Board states that there had been "errors", not misconduct, on both sides. The Board found: that Capitol violated the Collective Bargaining Agreement by failing to provide Gerhard with a copy thereof, and by not posting a current seniority list at the station; that both Gerhard and Capitol had an obligation to prevent the Pilot from exceeding his allowable hours for flying during a month; and that Capitol failed to have a proper official available to decide whether Gerhard would exceed his maximum flying hours by undertaking the flight in question. In exonerating Gerhard, the Board stated:

> "Gerhard is responsible for his errors, but he is not responsible for those on the part of the company . . . "

"Section 22 of the Agreement gives the company the **right to discharge for justifiable cause.** In this case, the neutral umpire does not consider the cause for discharge as justifiable" (emphasis added).

The Board directed that Gerhard be reinstated (R. 80a). (Due to an error the complete "Gerhard Award" is not printed in the Joint Appendix. However, the complete award is contained in Exhibit D to the Original Complaint, and the Court is respectfully referred thereto.)

Carlin Award.

The Award in the Carlin case indicated that he was discharged for writing certain letters of protest to Capitol officials concerning terms and conditions of employment. The Board found that the matter was properly before it; that said Board should hear the dispute because the letter of May 3 gave the Board jurisdiction; that the actions on the part of Capitol amounted to condoning the actions of Captain Carlin; and that Captain Carlin should be reinstated without back pay (R. 77a-79a).

The decision of the Sixth Circuit Court of Appeals is correctly set out in Capitol's petition. In the present posture of the case, the Hull, Carlin and Gerhard awards have been ordered enforced, leaving only the Riley award not subject to enforcement.

ARGUMENT.

At the outset it should be noted that this Court has conclusively disposed of all questions presented in this petition for Writ of Certiorari. In **International Association of Machinists, AFL-CIO, et al. v. Central Airlines, Inc.**, 372 U. S. 682, 10 L. ed. 2d 67 (Apr. 15, 1963), all questions raised by this Petition for Writ of Certiorari were affirmatively and unequivocally answered contrary to the position now taken by Capitol. Petitioner fails to show any reason for granting the writ as listed in Rule 19. **International Association of Machinists, AFL-CIO, v. Central Airlines, Inc.**, *supra*.

Respectfully submitted,

CECIL D. BRANSTETTER,
216 Third Avenue North,
Nashville, Tennessee,

HARRY NOE,
55th Street and Cicero Avenue,
Chicago, Illinois,
Attorneys for Air Line Pilots Association, International.

CROWNOVER & BRANSTETTER,
216 Third Avenue North,
Nashville, Tennessee,
Of Counsel.

Certificate of Service.

I hereby certify as attorney of record for the Air Line Pilots Association, International, in the above styled and numbered cause in this Court, that I have this date had

mailed by air mail, postage prepaid, to Judson Harwood, Esquire, Nashville Bank & Trust Building, Nashville, Tennessee, attorney of record for the Petitioner at his said proper post office address, two copies of this brief of the Air Line Pilots Association, International, in opposition to petition for writ of certiorari and cross-petition for limited writ of certiorari.

This 26th day of April, 1965.

Cecil D. Branstetter,
216 Third Avenue North,
Nashville, Tennessee.